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AUG 16 2006

In re Application of
Suzuki et al.
Application No. 09/273,286

Filed: March 19, 1999

Attorney Docket Number: K036-3629

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: **OFFICE OF PETITIONS**
:
: DECISION ON
: PETITION

This is a decision in response to the Petition Under 37 C.F.R. §1.181(a) for Withdrawal of Notice of Abandonment, filed December 8, 2005 (Certificate of Mailing dated December 5, 2005). The delay in treating this petition is regretted.

The petition under 37 CFR § 1.181(a) is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly respond to the Notice of Allowance and issue Fee Due, mailed July 6, 1999. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on October 7, 1999. A Notice of Abandonment was mailed September 10, 1999.

Applicant files the instant petition and asserts that he did not receive the Notice of Allowance or any communication from the PTO concerning this application other than the filing receipt. In support of this assertion, Applicant provides copies of the Master Docket Book and the front face of the application file jacket.

Applicable Law, Rules and MPEP

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). See MPEP 711.03(c).

Analysis

Applicant has received neither the Notice of Allowance nor the Notice of Abandonment. The one communication that was received by Applicant - the filing receipt - has not been entered on the file jacket.

In view of the foregoing, "there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail ([] the practitioner has a history of not receiving Office actions)." Id.

Conclusion

The record supports the conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

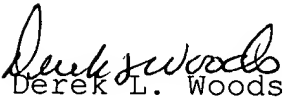
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3232.


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